

General Information Letter: The credit allowed for residential real property taxes paid may not reduce a taxpayer's liability below zero.

January 13, 2000

Dear:

This is in response to your letter dated December 2, 1999, received by our office on December 15, 1999, in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

As an Illinois resident homeowner and taxpayer employed in Indiana, I am writing concerning what I perceive as unequal treatment between Illinois resident homeowners and taxpayers employed in Illinois and myself along with all other, similarly situated Illinois resident homeowners and taxpayers who are employed in Indiana.

In prior years, Illinois and Indiana had reciprocal agreements, whereby Indiana employers withheld and remitted withholding to the Illinois Department of Revenue. However, effective January 1, 1998, the position of the Illinois Department of Revenue became that Illinois residents employed in Indiana became subject to Indiana Department of Revenue withholding and Indiana State 1040 filing requirements, as well as having to file also the Illinois 1040.

The unequal treatment comes about because Illinois resident taxpayers employed in Illinois on and after January 1, 1998, as well as all Illinois taxpayers prior to January 1, 1998 under the prior reciprocal agreement, will always receive the full benefit of the real estate tax credit on their Illinois returns, because that credit should not exceed the amount of income tax withholding remitted to the Illinois Department of Revenue or the Illinois income tax due. However, on my 1998 Illinois 1040, I was denied the benefit of the real estate tax credit, because my real estate tax credit exceeded my Illinois withholding and my Illinois income tax due, net of the credit for State taxes paid to Indiana.

I contacted the Illinois Department of Revenue by telephone and was told that if I were to receive the benefit of the credit for State taxes paid to another State and the real estate tax credit, that would result in a double credit. **I disagree; denying me the full benefit of the real estate tax credit available to Illinois resident taxpayers employed in Illinois results in double taxation to me, and all other Illinois taxpayers similarly situated, by the Illinois Department of Revenue, to the extent of the amount of the real estate tax credit denied.**

I request that the Illinois Department of Revenue undertake a "cost benefit analysis," and prepare an estimate of the number of Illinois taxpayers affected by the lack of parity, and also an estimate of the revenue loss if parity were instituted for the affected Illinois taxpayers.

In addition, I would appreciate receiving the results of prior legal research, if any, by legal counsel for the Illinois Department of Revenue, indicating that denial of the real estate tax credit to Illinois resident taxpayers employed in Indiana is constitutional (or is not unconstitutional).

It is my intent to consult with other members of the Illinois bar with expertise in taxation, constitutional law, and class action litigation, with views toward determining whether the Illinois Department of Revenue's practices and procedures result in unequal or discriminatory, and therefore, unconstitutional treatment of Illinois resident taxpayers employed in Indiana, and the possibility of certifying all such Illinois taxpayers as members of a class.

## **DISCUSSION**

With the ending of the reciprocal agreement between Indiana and Illinois, Illinois residents working in Indiana are now required to pay taxes to Indiana for income earned there rather than pay Illinois for such compensation. This is the same situation faced by Illinois residents working in Missouri. You are correct in stating that you will not receive a property tax credit in excess of your Illinois income tax liability; however, this is due to the property tax credit being non-refundable. Non-refundable means that the credit may only reduce a person's tax liability to zero, not below. Any excess credit is merely ignored. All credits are non-refundable unless their authorizing statute provides otherwise. The property tax credit is authorized by §208 of the Illinois Income Tax Act ("IITA"). As §208 does not authorize a refunding credit, the Department cannot administer the credit in that manner. Rather, as the credit for taxes paid to Indiana reduces your Illinois income tax liability the potential benefit of the property tax credit diminishes.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

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Very Truly Yours,

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